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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 000721

SIPDIS

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SUBJECT: COURT RULES PRESIDENT GUL SHOULD BE TRIED FOR FRAUD

REF: ANKARA 550

Classified By: POL Counselor Daniel O'Grady for reasons 1.4(b,d)

¶1. (C) Summary: An Ankara court ruled May 18 that President Gul should stand trial for fraud for his alleged involvement in the 1990's case which involved misappropriation of state funds by officials of the now-closed Welfare Party (Refah Partisi or RP), of which Gul was once Deputy Chairman. Although several RP officials, including its chairman Necmettin Erbakan, were convicted in that underlying case, the Ankara Prosecutor earlier dismissed legal proceedings against Gul. The court's ruling to reopen proceedings against Gul drew a sharp rebuke from the President's office, which questioned the motive of the Sincan court and declared that a sitting President may not be tried for anything other than the charge of treason. Re-opening the closed case against the sitting President suggests political bias by the court, and casts a further shadow on the objectivity of a judiciary already marred by allegations of bias in the AKP closure and Eregenekon cases. End summary.

¶2. (SBU) The Sincan Heavy Penal Court of the greater Ankara municipality ruled May 18 that President Gul should stand trial for fraud related to one million Turkish Lira (about \$700,000) of missing funds. The case dates back to the late 1990s, when the RP, a predecessor of the ruling Justice and Development Party (AKP), was accused of misappropriating funds from the Treasury. At the time, Gul was Deputy Chairman of the RP. In the underlying case, the court found former PM and RP founder Necmettin Erbakan, as well as several executives of the RP, guilty of falsifying party records and hiding millions of dollars in cash reserves that the Constitutional Court had ordered to be frozen in conjunction with the RP closure case. The Ankara Public Prosecutor's Office, however, had earlier dismissed the legal proceedings against Gul.

¶3. (SBU) The presidential press center denounced the court ruling. "The presidents can't be judged for any reason other than treason in accordance with the Constitution," Gul's office said in a written statement. The statement continued, "The efforts in some circles to attempt to present our president as a suspect, although he is not charged, does not demonstrate good will." Deputy Prime Minister Cemil Cicek told reporters following a May 18 cabinet meeting that, "It is unthinkable that presidents are not protected by immunity when deputies are. Parliament Speaker Koksal Toptan told reporters, "Presidents can solely be put on trial for

treason, and this requires very rigid conditions."

¶4. (SBU) Commentary on the issue has been split. Ilhan Selcuk wrote in leftist-nationalist "Cumhuriyet" that "It is not possible to claim President Gul is guilty at this point, but he is certainly a suspect. He should be tried so that the judicial process can make the verdict. Islamist-leaning "Yeni Safak" speculated that that former chief prosecutor Sabih Kanadoglu (who had initiated the AKP closure case) had influenced the Sincan court. ("Cumhuriyet" reported that Kanadoglu is arguing that the Constitution does not specifically offer immunity to a sitting president.) Liberal "Taraf" opined that the Sincan court was trying to punish Gul for his peaceful initiatives for solving the Kurdish issue.

¶5. (C) Comment: Political motives are clearly behind the charges against Gul. AKP members are familiar targets for Turkey's secular-minded prosecutors. In addition, the Ergenekon case (REFTEL) casts a conspiratorial shadow over all high-profile legal proceedings of the day. Revisiting a previously dismissed case is especially questionable. As a political ploy, the case is likely an attempted counter-attack by the secular elite against those they see as directing the Ergenekon investigation. The immediate legal effect will be negligible: the extent of Gul's immunity seems secure while he is in office. But as a warning, these charges are likely to underscore for the AKP that their political opposition remains formidable and resolute. In addition, calling into question the legal status of the president may compel AKP to clarify in the constitution the parameters of presidential immunity, adding yet another

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potential reason for AKP to call for the expansive amending of the constitution that the secularists would prefer to avoid.

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